



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** William D. Landau - Real Estate Expenses -  
Resale Waiver Fee or "Flip Tax"

**File:** B-226013

**Date:** October 28, 1987

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### DIGEST

A transferred employee sold his residence interest in a cooperatively-owned apartment building. He seeks reimbursement for a \$10 a share (798 shares) resale waiver fee or "Flip Tax" charged him by the cooperative, thereby granting him the right to dispose of his ownership interest on the open market in lieu of repurchase by the cooperative at a lower price. Real estate expense reimbursements are strictly governed by the Federal Travel Regulations (FTR), in which FTR para. 2-6.2d(1) authorizes reimbursement of fees which are "similar in nature to" the specific fees listed in FTR para. 2-6.2d(1)(a) through (e). Since none of the specifically listed authorized expenses relate to the purchase of a right to sell, a resale waiver fee is not sufficiently similar to them to permit reimbursement.

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### DECISION

This decision is in response to a request from an Authorized Certifying Officer, Veterans Administration (VA). It concerns the entitlement of one of its employees to be reimbursed for a resale waiver fee in connection with the sale of a cooperative apartment incident to a permanent change of station. We conclude that he may not be reimbursed for the following reasons.

### BACKGROUND

Mr. William D. Landau, an employee of the VA, was stationed at the VA Regional Office in New York. He owned an apartment interest in the Toledo Court Mutual Housing Cooperative, Elmhurst, New York, which he occupied as his residence. In November 1985, he was transferred on a permanent change of station from New York to Washington, D.C., and sold his apartment interest which was represented by 798 shares of stock in the cooperative. Among the expenses claimed was \$7,980, which represented a \$10 per share resale waiver fee or "flip tax" charged him by the

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cooperative. That expense was disallowed by the VA since Mr. Landau failed to document the basis for the charge.

On reclaim, Mr. Landau states that Toledo Court Mutual Housing Cooperative came under section 213 of the Federal Housing Act. Under the cooperative's by-laws as approved by the Federal Housing Administration, the cooperative had the right of first refusal to repurchase an apartment interest or to waive that right, thus permitting the owner to sell his interest on the open market. In return for waiving this right, Toledo Court required a payment of waiver fee equal to the lesser of \$10 a share, or 60 percent of the resale profit. If an outgoing shareholder declined the resale options, he was deemed to have offered his stock to the cooperative for repurchase at a significantly lower price than he could get for it on the open market. Mr. Landau contends that his transfer gave him no choice in the matter. As a result, it is his view that the payment is a properly reimbursable real estate expense.

#### RULING

In our decision in Zera B. Taylor, 61 Comp. Gen. 136 (1981), citing to our decision in Irwin Kaplan, B-190815, March 27, 1978, we ruled that in the absence of evidence clearly establishing different arrangements, an interest in a cooperatively-owned apartment building is a form of ownership of a residence for which real estate expenses may be reimbursed to the extent provided by the Federal Travel Regulations.

Paragraph 2-6.2d of the Federal Travel Regulations FTR, incorp. by ref., 41 C.F.R. § 101-7.003 (1983), as amended by GSA Bulletin FPMR A-40, Supp. 4 (effective October 1982), authorizes in paragraph 2-6.2d(1) the reimbursement of miscellaneous expenses incident to the purchase or sale of real estate. The specifically allowed items listed in FTR paragraph 2-6.2d(1) include:

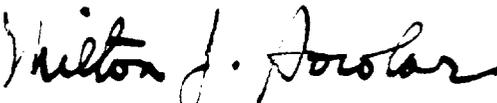
- "(a) FHA or VA fee for loan application;
- (b) Loan origination fee;
- (c) Cost of preparing credit reports;
- (d) Mortgage and transfer taxes;
- (e) State revenue stamps \* \* \*."

In addition to the above list, paragraph 2-6.2d(1)(f) permits the payment of "Other fees and charges similar in nature to those listed above, unless specifically prohibited in [subparagraph] (2) \* \* \*."

While a resale waiver fee is not one of the nonreimbursable items listed in FTR paragraph 2-6.2d(2), it is not one of the items specifically listed in paragraph 2-6.2d(1)(a) through (e), either. Therefore, unless it satisfies the conditions in paragraph 2-6.2d(1)(f) as being similar in nature to those in (a) through (e), it may not be reimbursed.

On the issue of similarity, we ruled in Edward W. Aikens, 63 Comp. Gen. 355 (1984), that a loan assumption fee was sufficiently similar in nature to a loan origination fee to permit reimbursement. In Keith E. Mullnix, B-216973, April 22, 1985, we permitted reimbursement of a loan transfer fee since it also was similar to and assessed in lieu of a loan origination fee. However, in Veterans Administration, B-217719, July 1, 1985, citing to our decision in Aikens, above, we concluded that a Veterans Administration funding fee may not be reimbursed since it was not similar to a loan origination fee or to any other item specifically listed in FTR paragraph 2-6.2d(1)(a) through (e).

So it is with a resale waiver fee. Essentially, it is a cooperative apartment owner's purchase of a right to dispose of his apartment interest on the open market. As such, it is our view that it is not sufficiently similar in nature to any of the items listed in clauses (a) through (e) to permit reimbursement. This fee appears to be unique to transactions involving cooperatively-owned residences, and we are unaware of any other authority in the Federal Travel Regulations which would authorize payment of this expense. Accordingly, the agency action disallowing the claim is sustained.

*for*   
Comptroller General  
of the United States